IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2494 OF 2006

IN

ARBITRATION PETITION (LODG) NO.262 OF 2006

AND

ARBITRATION PETITION (LODG) NO.262 OF 2006

Union of India. ... Petitioner

vs.

1.Mid Day Radio(North) India Ltd.
2.Mid Day Radio(South) India Ltd. ... Respondents.

Ms.S.I.Shah, for Petitioner.

Mr.D.D.Madan i/b. M.R.Baya, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 26th September,2006

P.C.:-

1. The facts that are relevant for deciding this notice of motion and the petition are that the petition has been filed under Section 34 of the Arbitration and Conciliation Act challenging the arbitral award. Admitted position is that the Award is dated 31.5.2005.

It is also an admitted position that the Award was served and was received by the petitioner on 3.6.2005. A petition under section 34 of the Arbitration and Conciliation Act challenging the same Award was filed before the Delhi High Court on 29.9.2005. It is common ground that when the petition was filed in the Delhi High Court on 29.9.2005, there was delay of about 27 days in filing that petition and therefore, before the Delhi High Court, an application for condonation of that delay was taken out. When the matter was before the Delhi High Court, an objection was raised to the jurisdiction of the Delhi High Court to entertain the petition on the ground that the earlier petition under Section 9 of the Arbitration and Conciliation Act in relation to the same proceedings was filed in this Court and therefore, in view of the provisions of Section 42 of the Arbitration and Conciliation Act, it is only this Court which has jurisdiction to entertain the petition. The Delhi High Court by order dated 4.1.2006 upheld the objection and returned the petition to the petitioner for presentation before the appropriate Court. It is pertinent to note here that the Delhi High Court did not fix any time for presentation of the petition before the appropriate Court.

2. Though the petition was returned on 4.1.2006, it was presented to this Court on 11.5.2006. Therefore, so far as position of Law is concerned, as the Court under sub-section (3) of Section 34 of

the Arbitration and Conciliation Act has power to condone delay of maximum period of 30 days. The period of 30 days, taking into consideration the delay of 27 days in filing petition before the Delhi High Court, will come to an end on 7.1.2006 i.e. three days after the proceedings in the Delhi High Court were determined by returning the petition to the petitioner. Therefore, now whatever may be the reason whether sufficient or insufficient, in view of the clear provisions of sub-section (3) of Section 34 of the Arbitration Act, this Court does not have power to entertain the petition. The Notice of motion and the petition, therefore, are disposed of.